

OGC Has Reviewed

5 November 1948.

MEMORANDUM FOR THE RECORD.

A meeting was held this date between Mr. Arthur Fisher, Associate Register of Copyrights, Library of Congress, [REDACTED] and the undersigned, to discuss the problems of copyrights raised in my memorandum for the record dated 27 October 1948, subject, Legal Relations Between [REDACTED]. These problems had been left with Mr. Fisher to consider for several days, and both he and his staff had evidently considered them very thoughtfully.

Mr. Fisher's initial approach was to study samples of the [REDACTED] and then to divide the text into several specific categories.

The first category was pure news. Mr. Fisher felt that it might be possible to use a great deal of this material under the doctrine of "fair use." However, the undersigned believes that this is an unwarranted extension of that doctrine. Mr. Fisher pointed out that much of the news furnished by the news services is printed in newspapers which are not copyrighted. As an example, he cited the Washington Times-Herald, which since the death of Mrs. Patterson does not copyright its text. As a result, a tremendous portion of the news which appears in the [REDACTED] is published in newspapers in this country and abroad without protection by copyright; and the owners can not institute suit for infringement in its use. Furthermore, it must be realized by the press associations in the United States that they are selling their news to newspapers which are not being copyrighted, and therefore the news falls into the public domain. This is of no particular interest to the news services, the value of the news to them being merely one of timeliness in servicing their customers.

Therefore, a large segment of the [REDACTED] consists of news which will ultimately fall into the public domain and remain uncopyrighted. Its use by us is therefore permissible.

The next category is material reproduced from foreign sources in countries with which the United States has no reciprocal copyright relations. Of these, the most important is Russia, which is not a member of any international copyright convention, nor does it have any reciprocal relations with this country in the copyright field. Other countries with which there seem to be no international copyright relations at present are Bulgaria and Yugoslavia. Although we do have reciprocal

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relations with China, these are honored more in the breach than in the observance by the Chinese. Thus, there is a second group of material which is not subject to copyright protection and which we are free to use.

A third category of material to be considered is that of public statements, speeches of officials, reports of meetings, and similar works. To be sure, an occasional speech by a public leader, such as Winston Churchill, is a literary effort which will subsequently appear in a compilation of his public addresses; but when these speeches are delivered on public occasions and are reproduced in the press, and it is obvious that their public repetition is expected, then there appears to be no question that we are perfectly free to reproduce the material.

Finally, there is a small group of material consisting of creative literary works of value, such as the writing of special correspondents, syndicated columnists, and similar efforts. The general philosophy is to protect commentators, columnists, and the like as the authors of literary works. This is particularly true among the countries of the Bern Convention. As a result, the taking of this category of work might well be considered a violation of the copyright.

In considering these categories, Mr. Fisher considered the possibility of paraphrasing all of this material. This idea he rejected, as it would destroy everything which [] is seeking to achieve, namely, the verbatim reproduction of this material. His next thought was to limit the circulation drastically, and establish [] strictly as an intelligence service to a limited clientele. In this way, very few people would know about it. It would have a high priority connected with the security of the United States, and the damages, if any suit were brought, would be extremely limited. Thus we would be able to reduce the business risk. Under the present circulation, it should be realized that CIA has, in effect, become a publisher, and must bear the burdens that any other publisher must bear.

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Mr. Fisher then turned his thoughts to possible legislation which might serve to protect us. He has rejected this method, as it would seem that our present distribution is too wide, and we could not get legislative protection for so broad a circulation. If we narrow the circulation, he feels that we will not need the legislative protection.

Realizing, therefore, that legislative action is not feasible in this case, that to paraphrase the material would seriously impair the effectiveness of the publication, and that it would be desirable not to limit the circulation if it could be avoided, Mr. Fisher recommended that we carefully analyze the incoming flow of material which is ultimately published by us. This analysis should continue for several weeks, if not

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months. He feels that such an analysis would probably show that four-fifths of the material published would probably be clear. Of the remaining one-fifth, some of the touchiest material could be paraphrased, and some selective judgment could be exercised when it is desired to publish material of literary value — material which we know is actually protected by copyright, particularly syndicated works, or the writings of commentators. In these works, it might conceivably be possible to secure some prior approval. Under any condition, it should be pulled out of the public edition which goes to the press and to the libraries.

Under the above system, Mr. Fisher felt that the business risk was materially decreased to a point where it is a negligible one. As a further protection, the giving of credit on each item, as is presently done, is extremely important and helpful.

Finally, in considering the question of unfair competition, Mr. Fisher concluded with the thought that the A.P. cases would not, in all probability, be followed in a type of work such as ours, since in these cases there was a steal for commercial profit without credit being given.

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